

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**November 19, 2013**

**Diane M. Fremgen  
Clerk of Court of Appeals**

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal Nos. 2013AP659-CR  
2013AP660-CR**

**Cir. Ct. Nos. 2012CT8  
2012CT35**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CINDY LOU HILSGEN A/K/A CINDY LOU HILSGAN,**

**DEFENDANT-APPELLANT.**

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APPEALS from judgments and orders of the circuit court for Pierce County: JOSEPH D. BOLES, Judge. *Affirmed.*

¶1 MANGERSON, J.<sup>1</sup> Cindy Lou Hilsgen, a/k/a Cindy Lou Hilsgan, pro se, appeals two judgments of conviction, entered following separate jury trials,

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<sup>1</sup> These appeals are decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

for operating without a valid license, contrary to WIS. STAT. § 343.05(3)(a). Hilsgen also appeals orders denying her postconviction motions to vacate the verdicts. On appeal, she argues she was improperly charged with operating without a valid license instead of operating while revoked, and the circuit court lacked subject matter jurisdiction. We affirm.

## **BACKGROUND**

¶2 The facts are undisputed. Hilsgen was stopped by law enforcement on October 1, 2011, and again, on January 3, 2012. During each traffic stop, Hilsgen told the officer she did not have a driver’s license. Following each traffic stop, the State charged Hilsgen with operating without a valid license. At both jury trials, the evidence showed Hilsgen did not have a valid driver’s license—her license was revoked in Minnesota in 2004, and, after moving to Wisconsin, she never obtained a Wisconsin driver’s license. The jury at each trial found Hilsgen guilty of operating without a valid license.

¶3 Hilsgen filed an identical postconviction motion in each case, asking the court to vacate the jury’s verdict. She asserted that, because she had a revoked Minnesota license, she should have been charged with operating while revoked, contrary to WIS. STAT. § 343.44(1)(b), instead of operating without a valid license, contrary to WIS. STAT. § 343.05(3)(a). In support, she emphasized that subsection (6) in the operating without a valid license section stated: “Section 343.44 [operating while revoked] and the penalties thereunder shall apply in lieu of this section to any person operating a motor vehicle upon a highway in this state with an operator’s license which is revoked or suspended.” *See* WIS. STAT. § 343.05(6).

¶4 The circuit court denied Hilsgen’s postconviction motions, concluding Hilsgen’s argument was both untimely and forfeited. The court reasoned Hilsgen was required, but failed, to raise her improperly-charged argument in a pretrial motion under WIS. STAT. § 971.31(2) and (5).<sup>2</sup> In any event, the court also concluded her argument failed on the merits.

## DISCUSSION

¶5 On appeal, Hilsgen renews her argument that she was improperly charged with operating without a valid license instead of operating while revoked. She argues her argument goes to the circuit court’s subject matter jurisdiction, which she contends may be challenged at any time.

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<sup>2</sup> WISCONSIN STAT. § 971.31, is entitled, “Motions before trial,” and provides, in relevant part:

(2) Except as provided in sub. (5), defenses and objections based on defects in the institution of the proceedings, insufficiency of the complaint, information or indictment, invalidity in whole or in part of the statute on which the prosecution is founded, or the use of illegal means to secure evidence shall be raised before trial by motion or be deemed waived. The court may, however, entertain such motion at the trial, in which case the defendant waives any jeopardy that may have attached. The motion to suppress evidence shall be so entertained with waiver of jeopardy when it appears that the defendant is surprised by the state’s possession of such evidence.

....

(5)(a) Motions before trial shall be served and filed within 10 days after the initial appearance of the defendant in a misdemeanor action or 10 days after arraignment in a felony action unless the court otherwise permits.

¶6 “Criminal subject-matter jurisdiction is the ‘power of the court to inquire into the charged crime, to apply the applicable law and to declare the punishment.’” *State v. Aniton*, 183 Wis. 2d 125, 129-30, 515 N.W.2d 302 (Ct. App. 1994) (citation omitted). A “circuit court lacks criminal subject-matter jurisdiction only where the complaint does not charge an offense known to law.” *Id.* A circuit court’s subject matter jurisdiction attaches when the complaint is filed and continues until the final disposition of the case. *Id.*

¶7 In this case, the State charged an offense known to law—specifically, operating without a valid license, contrary to WIS. STAT. § 343.05(3)(a). As a result, the circuit court had subject matter jurisdiction. *See Aniton*, 183 Wis. 2d at 129-30. Because the State charged an offense known to law, Hilsgen’s argument that she was improperly charged does not affect the court’s subject matter jurisdiction.

¶8 Hilsgen also argues the circuit court lacked subject matter jurisdiction because the State failed to establish the *corpus delicti* of the crime. It is a well-settled principle of criminal law that one cannot be convicted of a crime unless the *corpus delicti*—that is, the fact that a crime has been committed—is established by the State. TED M. WARSHAFSKY AND FRANK T. CRIVELLO II, 10 WISCONSIN PRACTICE SERIES: TRIAL HANDBOOK FOR WIS. LAWYERS § 9:12 (3d ed. 2012); *see, e.g., State v. Kitowski*, 44 Wis. 2d 259, 261, 170 N.W.2d 703 (1969) (*corpus delicti* of arson is a fire caused by criminal agency, as opposed to natural causes).

¶9 We reject Hilsgen’s *corpus delicti* argument. First, the *corpus delicti* of a crime does not affect the circuit court’s subject matter jurisdiction. Rather, as stated above, a circuit court’s subject matter jurisdiction attaches when

the complaint is filed—not when the State proves that a crime has been committed. *See Aniton*, 183 Wis. 2d at 129-30. Second, Hilsgen does not explain why she believes the State failed to prove the *corpus delicti* of operating without a valid license. She does not argue the evidence failed to show she operated without a valid driver’s license. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (We need not address undeveloped arguments.). However, even if she made that argument, it would fail. WISCONSIN STAT. § 343.05(3)(a) provides: “No person may operate a motor vehicle which is not a commercial motor vehicle upon a highway in this state unless the person possesses a valid operator’s license issued to the person by the department which is not revoked, suspended, canceled or expired.” Based on the certified copies of Hilsgen’s Minnesota and Wisconsin driving records, which were admitted into evidence at both trials, it is undisputed that, at the time of both stops, Hilsgen did not possess a valid operator’s license.

¶10 Finally, we observe Hilsgen never addressed the circuit court’s determination that her improperly-charged argument was untimely and forfeited pursuant to WIS. STAT. § 971.31(2) and (5). Hilsgen has therefore conceded that the circuit court correctly concluded Hilsgen forfeited her right to make that argument by failing to raise it in a pretrial motion. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (ignoring grounds upon which circuit court ruled constitutes a concession of the validity of the court’s ruling). As a result, we need not determine whether the State should have charged Hilsgen with operating while revoked instead of operating without a valid license. Moreover, on appeal, the State argues Hilsgen’s improperly-charged argument was untimely and forfeited because she failed to raise it in a pretrial motion. Hilsgen failed to file a reply brief and therefore also concedes that issue. *See*

***Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.***, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

*By the Court.*—Judgments and orders affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

